

No. PD-0018-0019-22

TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
3/4/2022
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS, Appellant

v.

SEBASTIAN TORRES, Appellee

Appeal from Hidalgo County
Nos. 13-20-00101-CR
& 13-20-00102-CR

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**STATE'S LETTER REPLY TO APPELLEE'S RESPONSE
TO ITS
PETITION FOR DISCRETIONARY REVIEW**

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ORAL ARGUMENT REQUESTED

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

In his response to the State's petition for discretionary review, appellee says the State's petition is the first time it has advanced the argument that mere invocation of the procedure set out in TEX. FAM. CODE § 51.095(f) is not its "use[]" as contemplated by that statute.¹ The record shows otherwise.

Appellee's first motion to suppress, filed March of 2018, was fairly "boiler plate"; it did not set out any theory related to Subsection (f). The issue was discussed at a hearing in January of 2019, however. There, appellee made the argument that initiating the process described in Subsection (f) but failing to complete it results in the statement's inadmissibility: "That's dispositive, it's mandatory, the language is 'shall' and it was not done in this case."² The State's response was clear:

[T]he last part says: "If the magistrate uses the procedure described in this subsection." . . . So, because [the magistrate] never requested, uh, after those warnings were given and after the statement was given that Sebastian be brought back to him, then, uh, his statement, his subsequent statement is not excluded. It is not a mandatory requirement, it's a suggestive requirement and [the magistrate] testified to that, that he was not sure if it was mandatory or suggested that he has done it on other cases, but that he didn't do it in this particular matter and for that reason, the statement should be allowed, Your Honor.³

¹ See TEX. FAM. CODE § 51.095(f) ("If a magistrate uses the procedure described by this subsection, a child's statement is not admissible unless the magistrate determines that the statement was given voluntarily.").

² 2 RR 57-58.

³ 2 RR 59.

Subsequent conversation between defense counsel and the trial court shows the latter understood the issue when it denied the motion to suppress subject to re-urging before trial.⁴

And re-urge appellee did. He framed it as an “invocation” argument in his October, 2019 motion to suppress.⁵ At the hearing on that motion, appellee recognized that “the State has argued once before that because the justice did it wrong or didn’t complete it, then he didn’t really use the procedure.”⁶ Appellee and the trial court then discussed the matter at length before the State was asked for a response.⁷ The State again explained that, unlike with written statements, Subsection (f)’s repeated use of the word “may” signifies that the procedure for oral statements is not mandatory.⁸

After appellee’s motion was granted, the trial court issued findings and conclusions that showed it believed invoking the procedures of Subsection (f) but failing to complete them results in the oral statement being inadmissible.⁹

⁴ 2 RR 60-64.

⁵ 2 CR 638 (“Judge Barrera invoked this procedure described in section (f) in his admonition of Sebastian Torres. . . . Once invoked the procedure is mandatory.”).

⁶ 4 RR 49.

⁷ 4 RR 49-64.

⁸ 4 RR 65-67.

⁹ 2nd Supp. CR 30-31 (Conclusions 3, 4).

The State appealed. It included an argument that, because Subsection (f) is discretionary, initiating the procedure was not enough to render a statement inadmissible in the absence of a finding of voluntariness.¹⁰ It cited to the record where this argument was made in the second suppression hearing.¹¹

In short, everyone involved at trial and on appeal was aware that the fight was over whether mere invocation of Subsection (f) requires full compliance with it. Whether framed as “invocation versus use” or “mandatory versus discretionary,” the issue is the same. The court of appeals decided the issue. The propriety of that decision is properly before this Court.

Respectfully submitted,

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¹⁰ State’s Br. at 13-14.

¹¹ State’s Br. at 13.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to the WordPerfect word count tool the applicable portion of this document contains 619 words.

/s/ John R. Messinger
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CERTIFICATE OF SERVICE

The undersigned certifies that on March 3, 2022, the State's Letter Reply was filed and served electronically on the parties below:

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